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IN THE
Supreme Court of the United States

IN RE: DISCIPLINARY MATTER OF MICHAEL ROBERT FLETCHER,
Petitioner,

On Petition for Writ of Certiorari
to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a judge who initiates formal disciplinary proceedings against an attorney must then recuse himself from such proceedings and, if so, whether the failure to do so is subject to harmless-error review if a multi-member panel later acts unanimously in disciplining the attorney.

2. Whether a district court may use a single allegation of misconduct as an excuse to order an independent investigation of an attorney's entire career and, ultimately, to impose punishment for various unrelated ethical violations spanning that career.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Michael Robert Fletcher respectfully petitions for a writ of certiorari in *In Re: Disciplinary Proceedings of Michael Robert Fletcher,* Nos. 04-2636 & 04-9013.

OPINIONS BELOW

The opinion of the Eighth Circuit is reported at 424 F.3d 783 (8th Cir. 2005), and is reproduced at App. 1a-22a. The other relevant order from the Eighth Circuit is unpublished and is reproduced at App. 30a-31a. The opinion of the district court is not reported and is reproduced at App. 23a-28a.

JURISDICTION

The Eighth Circuit issued its opinion on September 23, 2005. It denied Petitioner's timely filed petition for rehearing or rehearing en banc on November 10, 2005. App. 29a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution provides in relevant part that: "No person shall be . . . deprived of life, liberty, or property, without due process of law."

28 U.S.C. § 455 provides in relevant part: "(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding. . . ."

STATEMENT OF THE CASE

This case involves a district court's preordained decision to suspend an attorney from practice before it. The district court's actions – and the Eighth Circuit's tolerance for them – raise acute questions concerning fairness and process, as well as the proper scope of attorney discipline proceedings.

1. Petitioner Michael Robert Fletcher is a plaintiff-side civil rights attorney at the firm Simpson Sanders & Fletcher, L.C. in Kansas City, Missouri. He is 39 years old. He was admitted to the Missouri State Bar on October 10, 1996, and he specializes in race discrimination cases. App. 2a. Although Fletcher practices primarily in state court, he was admitted to practice in the U.S. District Court for the Western District of Missouri on May 20, 1998. App. 2a.

Fletcher is closely tied to the African American community in Kansas City, and he serves many clients who otherwise would not know where to turn for representation. In fact, as far as Fletcher knows, he is the only African American attorney who prosecutes race discrimination cases in the Western District and is the only such attorney who has first-chaired a trial in that court.

Fletcher, by all accounts, is a talented, dedicated, and passionate attorney who regularly obtains excellent results for his clients. App. 15a, 27a. Before the order here, Fletcher had never been sanctioned or disciplined in any court, with the exception an order by Judge Smith of the Western District of Missouri in 2000 threatening to fine all eleven lawyers in a case unless they became more cooperative during discovery. App.737; *Ross v. Kansas City Power & Light Co.*, 197 F.R.D. 646, 663-64 (W.D. Mo. 2000).

2. On August 25, 2000, Fletcher filed a lawsuit the Western District of Missouri captioned *Turner v. Honeywell Federal Manufacturing & Technologies LLC*, No. 00-0868-

CV-W-REL. The complaint alleged that Honeywell had denied his client, William Turner, promotions on the basis of race. As discovery progressed over the next several months, several additional individuals came forward and asked to join the suit on the ground that they, too, had suffered race discrimination at the hands of Honeywell. Fletcher asked the district court for permission to join these additional people as plaintiffs, but the court denied this request. App. 5a.

After that denial, Fletcher and others in his firm filed eighteen individual lawsuits in March and April of 2002 against Honeywell on behalf of these new plaintiffs (hereafter, the "Honeywell complaints"). These cases were assigned to numerous judges in the Western District of Missouri.

Each of the eighteen complaints contained allegations based on deposition testimony that three Honeywell executives gave during the *Turner* litigation. The complaints stated that Jimmy Banks, Honeywell's former Manager of Human Resources Services and Diversity, "testified that . . . [r]eferring to an African-American as a nigger 'could be a term of affection in our culture,'" or a "compliment." App. 6a. They further alleged that Mr. Banks gave other similar testimony such as that using the term "nigger bitch" "'may be an acceptable expression that people use'" in reference to an African American female. *Id.* The complaints also alleged that Karen Clegg, another Honeywell executive, "testified that . . . [s]he admits that she told a group of management employees in a meeting at Honeywell that 'the white man is an endangered species at Honeywell.'" App. 7a. The complaint cited to the particular pages and lines of all quoted deposition testimony and attached the relevant pages, so the district court could assess the full context of the quotations.

Fletcher later testified that he included these deposition passages in the complaints because he believed that they were "highly relevant" to the cases. Motion For Order To Show

Cause Why Michael Robert Fletcher Should Not Be Disciplined For Professional Misconduct, at ¶ 61. The Eighth Circuit has held that managers' racially insensitive remarks can evince race discrimination, *White v. Honeywell, Inc.*, 141 F.3d 1270, 1275-76 (8th Cir. 1998), and punitive damages in discrimination cases turns in part on whether a company has an effective anti-discrimination policy, *see e.g., Kolstad v. American Dental Ass'n*, 527 U.S. 526, 545-56 (1999). Fletcher thus believed that forcing Honeywell to admit its managers made these alleged comments would undercut any later attempt to claim it had an effective system for combating discrimination. Motion for Order to Show Cause at ¶¶ 60, 62-63. Although each of the managers equivocated at the depositions or offered innocuous explanations for their remarks, it is undisputed that Fletcher intended to prove in the litigation that the testimony in the complaints truly reflected a discriminatory attitude in Honeywell's management.

Honeywell moved to strike the portions of the complaints involving its executives' deposition testimony. Honeywell argued that these allegations were impertinent and scandalous. U.S. District Judge Fenner, the first judge to take up this issue, granted Honeywell's motion in the case before him, ruling that although the Honeywell employees did make the statements attributed to them, the deposition testimony was "taken out of context so as to be misleading." *Coleman v. Honeywell Fed. Mfg. & Tech., LLC,* No. 02-0362-CV-W-4-ECF (W.D. Mo. June 18, 2002); App. 8a. One month later, Judge Wright entered a similar order in the case before him, *Combs v. Honeywell Fed. Mfg. & Tech., LLC,* No. 02-0220-CV-W-SOW (W.D. Mo. July 26, 2002). App. 8a. Both judges ordered Fletcher to file amended complaints without the deposition-related allegations, and Fletcher did so. App. 8a. Fletcher did not amend the complaints pending before other judges, however, reasoning that he would do so if and when so requested by other judges.

On November 7, 2002, Chief Judge Whipple also granted Honeywell's motion to strike in the case before him, *Smith v. Honeywell Fed. Mfg. & Tech., LLC*, No. 02-0234-CV-W-DW; App. 9a. Chief Judge Whipple criticized Fletcher for failing to amend the complaint on his own after the other judges' two rulings "put him on notice that [the complaints] had crossed the line." *Id.*. "Therefore, on its own motion, the Court order[ed] Plaintiff's counsel to show cause why substantial sanctions, including monetary sanctions, should not be imposed for violating Rule 11(b)(1)." *Id.* Fletcher filed a brief opposing Rule 11 sanctions, and Honeywell filed a brief in support of such a measure.

Chief Judge Whipple never ruled on his Rule 11 suggestion. Instead, he sent a letter to Fletcher on January 9, 2003, notifying him that "Judges Gary A. Fenner and Ortrie D. Smith, pursuant to Local Rule 83.6(d), have referred allegations of misconduct against you for investigation and if appropriate, prosecution of a formal disciplinary proceeding." App. 9a-10a (paraphrasing letter). The letter explained that "[t]he particular allegations prompting this referral stem from your representations to the Court" in the Honeywell complaints and comparisons with "the actual transcripts of the testimony" cited. App. 10a (referencing letter). The letter stated that the district court had appointed Theresa Levings (hereafter, "Appointed Counsel") to investigate whether filing the complaints violated Missouri Rule of Professional Conduct ("Mo. RPC") 4-3.3 (requiring candor toward the tribunal) or Mo. RPC 4-8.4 (prohibiting conduct that is "prejudicial to the administration of justice"). Finally, the letter notified Fletcher that Appointed Counsel also had the court's blessing to investigate any "other conduct or allegations that may come to her attention during the course of her investigation." App. 10a.

Taking the district court's invitation, Appointed Counsel conducted an expansive and exhaustive investigation of Fletcher. She mailed letters throughout the Kansas City legal